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Supreme Court of the United States

OCTOBER TERM, 1968

No. 33

WALTER E. WASHINGTON, et al., *Appellants*,

v.

MINNIE HARRELL, et al., *Appellees*.

Appeal from the United States District Court for the District of Columbia

Respectfully submitted,

CHARLES T. DUNCAN,
Corporation Counsel, D. C.

HUBERT B. PAIR,
Principal Assistant Corporation Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation Counsel, D. C.

Attorneys for Appellants,
District Building,
Washington, D. C. 20004

INDEX

PAGE

SUBJECT INDEX

Opinion Below 1

Jurisdiction 1

Statute Involved 2

Question Presented 2

Statement of the Case 2

Argument

Congress may constitutionally impose a one-year residence requirement as a condition for eligibility for public assistance in the District of Columbia 4

Conclusion 12

CASES CITED

Aptheker v. *Secretary of State* (1964), 378 U. S. 500 11

Edwards v. *California* (1941), 314 U. S. 160 ..... 6, 10

Flemming v. *Nestor* (1960), 363 U. S. 603 ..... 7, 8

Frisbie v. *United States* (1895), 157 U. S. 160 6

Green v. *Department of Public Welfare of State of Delaware* (D. C. Del. 1967), 270 F. Supp. 173 4

Harrell v. *Washington* (D. C. D. C. 1967), —— F. Supp. —— 4

Heath & Milligan Co. v. *Worst* (1907), 207 U. S. 338 ..... 8, 9

Helvering v. *Davis* (1937), 301 U. S. 619 9

Johnson v. *Robinson* (D. C. N. D. Ill., Civil Action No. 67-1883) 5

Kent v. *Dulles* (1958), 357 U. S. 116 11

Lindsley v. *Natural Carbonic Gas Co.* (1911), 220 U. S. 61 9

Lynch v. *United States* (1934), 292 U. S. 571 6

Mantell v. *Dandridge* (D. C. Md., Civil Action No. 18792) 5

Marshall v. *California Department of Social Welfare* (D. C. N. D. Cal., Civil Action No. 47401) 5

PAGE

McGowan v. *Maryland* (1961), 366 U. S. 420 8
Pennie v. *Reis* (1889), 132 U. S. 464 6
People ex rel. Heydenreich v. Lyons (1949), 374 Ill. 557, 30 N. E. 2d 46 4
Ramos v. *Health and Social Services Board of State of Wisconsin* (D. C. E. D. Wisc. 1967), 276 F. Supp. 474 4
Sherbert v. *Verner* (1963), 374 U. S. 398 7
Smith v. *Reynolds* (D. C. E. D. Pa. 1967), 277 F. Supp. 65 5
Speiser v. *Randall* (1958), 357 U. S. 513 7
Steward Machine Co. v. *Davis* (1937), 301 U. S. 548 9
Thompson v. *Shapiro* (D. C. Conn. 1967), 270 F. Supp. 331 ..... 4, 5, 9
United States v. *Cook* (1922), 257 U. S. 523 6
United States v. *Guest* (1966), 383 U. S. 745 11
United States v. *Petrillo* (1947), 332 U. S. 1 9
United States v. *Teller* (1882), 107 U. S. 64 6
Waggoner v. *Rosenn* (D. C. M. D. Pa. 1968) (Civil Action No. 9841), —— F. Supp. —— 5
Zemel v. *Rusk* (1965), 381 U. S. 1 11

UNITED STATES CODE CITED

Title 28, Section 1253 2
Title 28, Section 2282 3

DISTRICT OF COLUMBIA CODE, 1967, CITED

Section 3-203 ..... 5, 6, 7, 9, 10, 11, 12

ACT OF CONGRESS CITED

District of Columbia Public Assistance Act of 1962, 76 Stat. 914, Pub. L. 87-807, Section 4 (D. C. Code, 1967, Section 3-203) 2

OTHER AUTHORITIES CITED

Analysis of Welfare Residence Requirements in Light of Recent Decisions (1967), 29 U. Pitt. L. Rev. 138 11
Havith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs* (1966), 54 Cal. L. Rev. 567 9

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1134

WALTER E. WASHINGTON, et al., *Appellants*,

v.

MINNIE HARRELL, et al., *Appellees*.

Appeal from the United States District Court
for the District of Columbia

OPINION BELOW

The majority and dissenting opinions of the three-judge court of the United States District Court for the District of Columbia may be found in —— F. Supp. —— (A. 56).

JURISDICTION

The decree of the three-judge court declaring certain provisions of the District of Columbia Public Assistance Act repugnant to the Constitution of the United States and permanently enjoining their enforcement was entered on November 28, 1967 (A. 88-89). Notices of appeal were filed on December 22, 1967, and the record was docketed

in the Supreme Court of the United States on February 20, 1968. Jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1253, which provides for direct appeals from decisions of three-judge courts.

STATUTE INVOLVED

The District of Columbia Public Assistance Act of 1962, 76 Stat. 914, Pub. L. 87-807, § 4, District of Columbia Code, § 3-203 (1967), provides, in pertinent part:

> "Public Assistance shall be awarded to or on behalf of any needy individual who either (a) has resided in the District for one year immediately preceding the date of filing his application for such assistance; or (b) who was born within one year immediately preceding the application for such aid, if the parent or other relative with whom the child is living has resided in the District for one year immediately preceding the birth * * * ."

QUESTION PRESENTED

Whether the provisions of the District of Columbia Public Assistance Act of 1962, which make residence in the District of Columbia for one year a condition for eligibility for public assistance, are repugnant to the Constitution of the United States.

STATEMENT OF THE CASE

Appellants are officials of the District of Columbia Government charged with the responsibility of administering the District of Columbia Public Assistance Act of 1962. Appellees are members of a class of residents of the District of Columbia whose applications for public assistance were denied by appellants because they had not, as required by the Act, resided in the District of Columbia

for one year immediately preceding the dates of their applications.

Appellee Minnie Harrell and her children moved to the District of Columbia from New York on September 3, 1966, and applied for public assistance on May 12, 1967 (A. 7-8). Appellee Clay Mae LeGrant and her children moved to the District of Columbia from South Carolina on March 15, 1967, and her application for public assistance was denied on July 27, 1967 (A. 45). Appellee Gloria Jean Brown moved to the District of Columbia from Arkansas on February 5, 1966; her oldest child had been living with appellee's father in the District of Columbia since 1962; her two other children arrived in the District of Columbia in late August 1966; and a fourth child was born in the District of Columbia on November 12, 1966. Public assistance was applied for shortly after the birth of the fourth child. (A. 35.) Appellee Vera M. Barley arrived in the District of Columbia in March of 1941; and was committed to St. Elizabeths Hospital, a public mental institution, on April 1, 1941 (A. 20-21). She has been deemed eligible for release from St. Elizabeths Hospital into a foster care home since September 15, 1965, and her application for public assistance was filed on January 19, 1967 (A. 22). Under the regulations in force in the District of Columbia, residence is not acquired while one is a patient in a public institution.

Each of the appellees brought an action in the United States District Court for the District of Columbia seeking declaratory and injunctive relief. The gravamen of their complaints was that the provisions of the Public Assistance Act, under which their applications were considered and denied, are unconstitutional. (A. 4, 18, 32, 42.) The actions were consolidated, and, pursuant to 28 United States Code, § 2282, a three-judge court was convened. Following a hearing, the court, with one judge dissenting, held those provisions of the Act which make residence in

the District of Columbia for one year a condition for eligibility for public assistance repugnant to the Constitution of the United States (A. 56), and permanently enjoined appellants from enforcing or giving any legal effect to such provisions (A. 88).

ARGUMENT

Congress may constitutionally impose a one-year residence requirement as a condition for eligibility for public assistance in the District of Columbia.

Statutory residency requirements for public assistance, similar to those here involved, have been in effect in the great majority of jurisdictions throughout the United States for many years. Until recently, the constitutionality of such provisions was seldom challenged, and such challenges as were made were uniformly rejected. See, i. e., *People ex rel. Heydenreich* v. *Lyons*, 374 Ill. 557, 30 N. E. 2d 46 (1949).

Questions involving the constitutionality of statutory residency requirements for public assistance have recently been presented to three-judge District Courts in several jurisdictions.

In *Thompson* v. *Shapiro* (D. C. Conn. 1967), 270 F. Supp. 331, the court (with one judge dissenting) adjudged unconstitutional the Connecticut statute.

In *Green* v. *Department of Public Welfare of State of Delaware* (D. C. Del. 1967), 270 F. Supp. 173, the court declared the Delaware statute to be unconstitutional.

In the case at bar, the District of Columbia statute was held unconstitutional by a vote of two to one. *Harrell* v. *Washington* (D. C. D. C. 1967), 270 F. Supp. —— (A. 56).

In granting a preliminary injunction in *Ramos* v. *Health and Social Services Board of State of Wisconsin* (D. C. E. D. Wisc. 1967), 276 F. Supp. 474, the court expressed the opinion that the Wisconsin statute was unconstitutional.

By a two to one decision, the court in *Smith* v. *Reynolds* (D. C. E. D. Pa. 1967), 277 F. Supp. 65, declared unconstitutional the Pennsylvania statute.

In *Waggoner* v. *Rosenn* (D. C. M. D. Pa. 1968), —— F. Supp. —— (Civil Action No. 9841), the court, by a two to one decision, upheld the constitutionality of the Pennsylvania statute.

Other cases, including *Mantell* v. *Dandridge* (D. C. Md., Civil Action No. 18792), *Johnson* v. *Robinson* (D. C. N. D. Ill., Civil Action No. 67-1883), and *Marshall* v. *California Department of Social Welfare* (D. C. N. D. Cal., Civil Action No. 47401), are pending, in some of which preliminary injunctions have been entered.

In those instances in which the court struck down the residency requirement, it did so primarily on the ground that the statutes involved offended the equal protection clause of the Fourteenth Amendment. Expressly in *Thompson* v. *Shapiro, supra,* and by implication in some of the other cases, the court also adjudged the respective statutes invalid because they imposed "a chilling effect" on the constitutionally protected right to travel.

In striking down the challenged provision of the Act of Congress, D. C. Code, § 3-203 (1967) (hereinafter § 3-203), the court below declared that it was relying on "* * * considerations which stem primarily from the equal protection of the laws guaranteed by the Fourteenth Amendment and applicable to this jurisdiction by reason of the Due Process Clause of the Fifth Amendment" (A. 61, footnote omitted).

The court noted that the "* * * basic purpose [of the legislation], simply stated, is to aid members of the community who are in need * * *" (A. 69), and that § 3-203 "* * * creates two classes of persons; those who have resided in the District of Columbia for one-year or longer, and those who have resided here for less than one year" (A. 65). The court reasoned that this classification is

invalid because it is "without a reasonable relation to the purposes of the legislation" (A. 65).

In discussing the various considerations which may have motivated the Congress to enact § 3-203, the court observed that:

> (a) If the purpose of the Congress was "to protect this jurisdiction from an influx of persons seeking more generous public assistance than might be available elsewhere" (A. 66), under *Edwards* v. *California*, 314 U. S. 160 (1941), this was a "constitutionally impermissible basis" (A. 68).
>
> (b) If the purpose of the Congress was "to prevent abuse of the public assistance program" (an admittedly valid purpose), § 3-203 is, nevertheless, "too broad to be sustained," because, in the court's view, there are other and less onerous means of accomplishing this purpose (A. 68-69).
>
> (c) If the purpose of the Congress was "to confine assistance to domiciliaries of the jurisdiction" and it utilized a one year residency requirement as a means of providing "an objective legislative test of such status," such means is constitutionally invalid because § 3-203 excludes persons who are "bona fide domiciliaries" in the sense that they are living in the jurisdiction with an intention to remain indefinitely (A. 70).

In evaluating the constitutionality of § 3-203, the nature of the benefits conferred must be kept in mind. They are not contractual benefits or insurance. Plainly, § 3-203 confers no vested right. *Cf. Lynch* v. *United States*, 292 U. S. 571 (1934); *Frisbie v. United States*, 157 U. S. 160, 166 (1895); *Pennie* v. *Reis*, 132 U. S. 464 (1889); *United States* v. *Teller*, 107 U. S. 64, 68 (1882). Any challenge to the constitutionality of § 3-203 must, therefore, be viewed in light of the Court's pronouncement in *United States* v. *Cook*, 257 U. S. 523 (1922), that:

> "* * * Congress in shaping the form of its bounty may impose conditions and limitations

on its acquisition and enjoyment by the beneficiaries *which it could not impose on the use and enjoyment by them of a vested right.*"
[257 U. S. at 527; emphasis added.]

The basic flaw in the majority opinion is that, in concluding that § 3-203 creates an unconstitutional classification, it ignores the constitutional standards applicable to benefit legislation and applies instead those applicable in cases which involve preferred freedoms. In this connection, the court's reliance on *Sherbert* v. *Verner*, 374 U. S. 398 (1963), is illuminating. There, the claimant's right to unemployment insurance benefits, from a fund to which she had contributed, was conditioned upon her willingness to violate a cardinal principle of her religious faith. Benefits were denied her because she refused to engage in employment requiring her to work on her Sabbath. Because the case thus fell squarely within a First Amendment area, this Court refused to apply the test enunciated in *Flemming* v. *Nestor*, 363 U. S. 603 (1960), which would require that the applicable statute be upheld upon a "showing merely of a rational relationship to some colorable state interest * * *." (374 U. S. at 406.) Instead, the Court considered controlling *Speiser* v. *Randall*, 357 U. S. 513 (1958), a case also involving a preferred First Amendment freedom.

The instant case involves no preferred First Amendment freedom. Appellees were not denied welfare benefits because of considerations even remotely related to their religious beliefs or their association with any alleged subversive organization. Benefits were denied simply because appellees had not resided in the District of Columbia for one year. Any analogy with either *Speiser* or *Sherbert*, therefore, is untenable.

Although *Flemming* v. *Nestor*, *supra*, clearly militates against the soundness of the ruling below, its application to the instant case was, for all practical purposes, ignored by the majority opinion. In *Flemming*, the Court was

concerned with a provision in the Social Security Act which severed old age and disability insurance benefits from any person deported from the United States pursuant to statute. Unlike here, the benefits were afforded pursuant to a contributory insurance scheme to which the insured had made periodic payments. Nonetheless, the Court concluded that the statutory provision authorizing the cutting off of the benefits was a valid exercise of the legislative power of the Congress, saying (363 U. S. at 611):

> "* * * In judging the permissibility of the cut-off provision of * * * [§ 402(n)] from this standpoint, it is not within our authority to determine whether the Congressional judgment expressed in that section is sound or equitable, or whether it comports well or ill with the purposes of the Act. 'Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II, it is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom.' * * * *Particularly when we deal with a withholding of a noncontractual benefit under a social welfare program such as this, we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification.*" [Emphasis added.]

In determining whether there is rational justificatoin for a statutory classification, it is constitutionally irrelevant whether the assigned justification "underlay the legislative decision." *Flemming* v. *Nestor, supra,* 363 U. S. at 612. Stated another way, "a statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland,* 366 U. S. 420, 426 (1961). And see *Heath & Milligan Co.* v. *Worst,*

207 U. S. 338, 354-355 (1907); *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78-79 (1911); *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 585 (1937); *United States* v. *Petrillo*, 332 U. S. 1, 8-9 (1947).

There is "rational justification" for the residency requirement contained in § 3-203. As noted by Judge Holtzoff in his dissent below, the average monthly welfare grant made by the District of Columbia is considerably in excess of grants made by neighboring jurisdictions (A. 82-83). Absent the residency requirement of § 3-203, an overall reduction of grants available to eligible persons might logically ensue. This Court has recognized the problem involved. In *Helvering* v. *Davis*, 301 U. S. 619, 644 (1937), in upholding the constitutionality of the Federal Social Security Act, it said:

> "* * * A system of old age pensions has special dangers of its own, if put in force in one state and rejected in another. The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose. * * *"

And see Havith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 Cal. L. Rev. 567, 618 (1966), in which the commentator observes:

> "A fair conclusion seems to be that in at least some states, it is not unreasonable for the legislature to conclude that a useful saving in welfare costs may be obtained by residence tests discouraging those who would enter the state solely because of its welfare programs. In New York, for example, a one per cent saving in welfare costs would amount to several million dollars."

As Judge Clarie makes plain in his dissenting opinion in *Thompson* v. *Shapiro*, 270 F. Supp. at 340, durational residence requirements in numerous areas of the law have

been "established through several generations of orderly growth." If the principle articulated by the majority opinion below is countenanced by this Court, the continuing validity of all such requirements will obviously be undermined.

As the court below recognized, it was obviously the purpose of the Congress to confine welfare benefits to domiciliaries of the District of Columbia, as distinguished from persons merely sojourning temporarily in the jurisdiction. This is certainly a constitutionally permissible purpose. As the innumerable cases in which courts have struggled with the problem amply attest, whether or not a person is a resident of or domiciled in a particular jurisdiction frequently requires the consideration and resolution of complex and difficult questions of fact and law. In light of these well-known problems, it was well within the realm of legislative discretion for the Congress to enact an objective legislative test for determining who is a resident of the District of Columbia for purposes of public assistance. This the Congress accomplished by § 3-203. Contrary to the holding of the majority below, such a test bears a direct and reasonable relationship to the purpose of legislation.

Although the court below did not expressly hold that § 3-203 infringed appellees' constitutionally protected right to travel, its strong reliance on *Edwards* v. *California*, 314 U. S. 160 (1941), would indicate that it may have inferentially done so. In *Edwards*, the Court struck down a California statute making it a misdemeanor to knowingly bring or assist in bringing a non-resident indigent into the state. The majority concluded that the statute "imposed an unconstitutional burden on interstate commerce." 314 U. S. at 177. The statute construed in *Edwards* not only placed a direct restriction on interstate travel, but provided for criminal sanctions as well. Clearly, *Edwards* did not condemn all legislative action which may make entry

into a jurisdiction less advantageous than it might otherwise have been, and no decision of this Court has gone that far.

Recent decisions of this Court upholding the right to travel involved affirmative attempts by officials to create a direct blockage. See *Zemel* v. *Rusk*, 381 U. S. 1 (1965); *Aptheker* v. *Secretary of State*, 378 U. S. 500 (1964); *Kent* v. *Dulles*, 357 U. S. 116 (1958). For this reason alone, they would seem to have little application here. See Note, *Analysis of Welfare Residence Requirements in Light of Recent Decisions*, 29 U. Pitt. L. Rev. 138, 141 (1967). Moreover, appellees' asserted right to travel cannot be linked with the attempted exercise of a preferred First Amendment freedom as was claimed to be the case in *Aptheker* and *Kent*, *supra*, in which passports were revoked or denied because of alleged subversive associations. Cf. *Zemel* v. *Rusk*, *supra*, 381 U. S. at 16. It warrants emphasis, therefore, that the stricter standards of review applied by the Court in *Aptheker*, where the right to travel was entwined with the First Amendment freedom of association, cannot be justified in the case at bar.

In *United States* v. *Guest*, 383 U. S. 745 (1966), six individuals were charged in an indictment with a conspiracy, the objects of which were, *inter alia*, to shoot, beat, and kill Negro citizens who were attempting to use the highways and other facilities of interstate commerce. The Court held that this conduct, if proven, would involve an "offense under the laws of the United States" since it constituted an interference with the constitutional right to travel. Plainly, the direct interference with the right to travel involved in *Guest* cannot be analogized to the facts of the instant case.

Far from constituting a direct obstruction on appellees' right to travel, § 3-203 merely fails to provide an encouragement to the exercise of that right. It cannot reasonably

be labeled an unconstitutional encroachment of the right to travel simply because it makes it more costly for appellees to make their homes in the District of Columbia than in the jurisdictions in which they formerly lived. If such were the case, the District would logically be required not only to abolish its residence requirement but, in addition, to upgrade its benefits to meet the standards of the most generous public assistance program elsewhere. Moreover, there are countless laws enacted by state legislatures which in an incidental way discourage the right to travel. Statutes imposing higher taxes than those imposed by sister states and statutes imposing stricter license requirements than those applicable elsewhere readily suggest themselves as examples. In short, the indirect effect which § 3-203 places on appellees' right to travel does not rise to constitutional proportions.

CONCLUSION

Since, as demonstrated, the residency requirement of § 3-203 is not repugnant to the Constitution of the United States, the decree of the court below is manifestly erroneous and should, therefore, be reversed.

Respectfully submitted,

CHARLES T. DUNCAN,
Corporation Counsel, D. C.

HUBERT B. PAIR,
Principal Assistant Corporation Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation Counsel, D. C.

Attorneys for Appellants,
District Building,
Washington, D. C. 20004